

Accountability Report Transmittal Form

Agency Name Indigent Defense

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COMMISSION ON INDIGENT DEFENSE ACCOUNTABILITY REPORT FY 12-13

Section I-Executive Summary:

1. Purpose Mission and Values:

The Commission on Indigent Defense, in cooperation and consultation with state agencies, professional associations and other groups concerning the administration of criminal justice and the improvement and expansion of defender services, establishes and monitors programs and services for the delivery of legal representation to indigent defendants in State courts.

The Office of Indigent Defense establishes criteria used in the determination of indigency and qualifications for services for indigent legal representation and administers the distribution of appropriated funding for indigent defense. Additionally, the office establishes and supervises training programs for the Public Defender offices across the State as well as implementing a central reporting system for the accurate compilation of statistical data pertaining to the delivery of indigent defense services.

The Office of Appellate Defense is responsible for the majority of indigent criminal appeals, including death penalty appeals, before the South Carolina Supreme Court and Court of Appeals. The mission of Appellate Defense is to provide superior representation and legal analysis in a cost-efficient manner.

The Office of Circuit Public Defenders created by the Indigent Defense Act in 2007 provides a statewide public defender system with standards and accountability for representation and assistance of counsel to indigent defendants in a manner that is fair and consistent throughout the state. It replaced a county based system comprised of 39 Chief Public Defenders, employed by eleemosynary corporations, with 16 Circuit Public Defenders employed by the commission. This has resulted in fiscal accountability and consistent standards for the delivery of indigent defense services to the citizens of South Carolina.

The Death Penalty Trial Unit provides a resource for quality, cost effective representation in capital trials on a statewide basis and provides a savings to the state in the cost of representation for indigent defendants in death penalty trials. The Death Penalty Trial Division has reduced the expense of capital litigation, while providing qualified representation from the staff of this division. Capital trials were previously handled almost exclusively by the private bar which resulted in the state paying near "market rates" for legal services.

2. Major Achievements from Past Year:

The agency conducted its annual human resources survey as of July 1, 2013 to determine the number of full and part-time public defenders and the number of full and part-time attorneys on contract with public defender offices, as well as further breakdowns of other personnel, including investigators, employed in public defender offices. The survey also addressed salary information for public defenders, and included a section on county funding. Since we initiated this survey in 2009, the agency has been able to obtain completely reliable data on these topics, and the survey results are important throughout the budget process and at other times during the year.

We encouraged circuit defenders to be present at House and Senate budget subcommittee hearings and during floor debate, and the response was overwhelming. Circuit Defenders became thoroughly versed in budget issues and actively contacted their local representatives throughout the process, to educate them in public defender needs, which had a strong positive impact on our ability to obtain public defender funding. This achieved one of our on-going objectives of getting circuit defenders and all public defenders in the state more aware and better educated on the needs of the state's indigent defense system, and in turn more active in providing input in the legislative process.

Throughout 2012-13 the agency continued to improve its model technology and data collection system, and we placed heavy emphasis on Circuit Defenders to assure that data was being accurately and fully entered into our system. Many other states have sought our input in designing their technology systems.

Pursuant to a Commission motion to develop standards for public defender caseloads and the creation of a committee by the Chairman to address this issue, the agency has worked with the Chairman to assemble information and materials on caseload standards from as many states as possible throughout the country and has developed and published the Performance Standards for Public Defenders and Assigned Counsel (Non-Capital) and Juvenile Performance Standards effective July 1, 2013. The information is available on the agency website.

One top budget priority for FY12-13 was adequate funding for Civil Appointments. These cases include Abuse and Neglect of minors and vulnerable adults, Termination of Parental Rights, Probate Commitments, Sexually Violent Predator Act and Post Conviction Relief actions. Throughout the lengthy budget deliberations, we constantly pushed for this funding, and stayed in active communication with the SC Bar leadership and its government affairs staff on this issue, as well as with the entire Bar membership through articles in the Bar's *EBlast* (email notifications to all SC Bar members) and *Lawyers Weekly*.

The General Assembly provided \$6.3 million for the implementation of a program for private attorneys to contract directly with the agency to represent indigent defendants in court appointed cases. This will help to assure that only attorneys who are competent to handle those cases, and who desire to do so, are appointed. This should result in fewer appeals and fewer valid Post Conviction Relief actions. The expected outcome for the agency is cost effective quality representation.

The initial implementation of the contract system began in October, 2012 in 26 counties. The contract method, authorized by the Indigent Defense Act of 2007, provides for a smooth administration of cases appointed under Court Rule 608. At present nearly every attorney in the state is eligible for appointment to some type of case, regardless of their particular area of practice and its relevance to the type of case. The contract system focuses only on competent attorneys experienced in representation for the types of cases that qualify for indigent defense, thus producing better results at less cost, and a lower rate of appeals, while also minimizing the risk of malpractice and grievance.

For the seventh year, the agency continued to sponsor its annual Public Defender Best Practices Seminar in partnership with the Charleston School of Law (March 2013), and played a key role in organizing the Seventh Annual Public Defender Investigators Conference (March 20123). We assisted in securing speakers for the annual Public Defender Association Conference (September 20112), all in furtherance of the professional development mission of the agency. The agency also continued the important summer Rural Extern Program in partnership with the Charleston School of Law. This program received national recognition and was featured in an article in the Spring 2010 issue of the National Legal Aid and Defender Association's publication, *The Cornerstone*. The agency's Executive Director continues to serve as a member of the Board of Advisors of the Charleston School of Law.

The agency continued its internal audit of Rule 608 civil and criminal vouchers. Our new technology requires fewer voucher processing personnel and provides time to more carefully review payment requests for substantive issues. Many fees and expenses were called into question, many resolved with the submitting attorney, and many resolved in motion conferences and court hearings with judges resulting in substantial reductions in attorney fees. The agency had no funds to pay Rule 608 Civil Appointments vouchers for all of FY 2011-12 and accumulated approximately \$800,000 in unpaid vouchers. The cases which fall under Rule 608 for court appointment are mostly Family Court (Abuse and Neglect/Termination of Parental Rights) case and Post Conviction Relief cases which are handled in the Court of Common Pleas. We notified members of the Bar that there were no funds available to pay fees, but the Commission was able to pay for out-of-pocket expenses to attorneys handling the cases. Obligations were carried over to FY13 and paid when funding was appropriated.

SCCID continued to emphasize to the Department of Justice representatives the difficulties we have in accessing DOJ Byrne Grant funds in South Carolina, and this problem was reiterated by our Executive Director at several national conferences in 2013. Mr. Adams serves as a member of the Board of Directors of the National Legal Aid and Defender Association and as the Vice-Chairman of its Defender Division, and in those capacities has taken a lead in increasing NLADA's direct involvement with the Department of Justice in this issue. It is now a major issue being pursued by NLADA.

The only success the agency had during the fiscal year in obtaining federal grant funding was the renewal of a direct DOJ grant awarded jointly to SCCID and the Prosecution Coordination Commission. The grant provides for each agency to conduct two (2) seminars over a two (2) year period in prosecuting and defending capital cases. The agencies have been awarded the grant to continue Capital Defense Training for an additional two years. SCCID has facilitated three training sessions, the third training session having been held in May 2012. The agency conducted the fourth and final session in the first half of 2013.

The agency again participated in the John R. Justice Student Loan Repayment Grant with Commission on Prosecution Coordination and the Office of the Federal Public Defender. The total grant is for \$61,320 and is divided equally between the prosecutors and defenders. This grant assists in repayment of qualifying law school loans for attorneys who meet income qualifications and commit to three years service in the public sector.

Our technology continues to be a national model and has been the subject of several seminar presentations around the country, including one at American University in March, 2013. Two separate seminars focused on it in 2013 and during the year the agency had inquiries and/or visits from representatives of state indigent defense organizations in several states, bringing the number of state which have looked at our system to more than ten.

Hugh Ryan, Bob Dudek, Bill McGuire, Boyd Young and Kathrine Hudgins have all participated in various Continuing Legal Education seminars as invited speakers throughout the year. Also during the year the Director and Deputy Director have been invited to speak to many groups about the work of the agency, including judges, state bar association, magistrates, municipal and county officials.

3. Key Strategic Goals For Present and Future Years:

The ultimate goal of the agency is to provide a quality, unified, cost effective and efficient statewide system for the delivery of indigent defense to all eligible citizens of the state.

The mission of the agency also is to provide the resources necessary to appointed counsel, both Public Defenders and private attorneys, to represent those indigent or otherwise appointed clients in the State's criminal, civil and family courts. The lack of standardization in the determination of indigency is one of the key factors in assuring that resources are allocated to those citizens that qualify under federal poverty guidelines and to further ascertain the guidelines and qualifications for a determination of indigency are consistent throughout the state. To achieve this goal, the agency plans to review procedures of other states used to determine indigency and compare procedures used in South Carolina to develop a standard procedure to be implemented statewide. This proposed procedure will be submitted to the Chief Justice for discussion and approval by the Court and revision of South Carolina Appellate Court Rule 602 to incorporate the standardized procedure. The agency plans to initiate discussions with key stakeholders for assistance in implementation of docket management reforms, and other reforms, where agreed upon, based on a year-long study and analyses of the process by which the threshold issue of indigency is determined in SC, including a nationwide study of various means and procedures for determination of indigency used by other states; when appointment of counsel occurs/should occur; process of making appointments and by whom; verification of indigency determinations; and standardization of policies and procedures; recommendations for procedural changes, and recommendations to the SC Supreme Court for revisions in the SC Appellate Court Rules governing these issues to clarify, standardize and streamline the process.

The agency plans the development and implementation of technology which will identify the collateral consequences of each of the state's criminal offenses, by CDR code, for quick reference by public defenders when consulting with their clients. Our technology continues to be a national model and has been the subject of several seminar presentations around the country.

Additionally, the agency collects statistics on the operation of the indigent defense system in the state and provides information and material to interested parties including the Executive, Legislative and Judicial agencies of state government.

We will continue with the implementation of the 2007 Indigent Defense Act, including oversight and supervision of the state's public defender system; revision and expansion of agency and system-wide policies and procedures as needed and appropriate for administering the circuit public defender system.

Emphasis will continue on the establishment of policies, standards, guidelines and procedures as set forth in the 2007 Indigent Defense Act, including workload/caseload issues, Post-Conviction Relief procedures revisions, voucher payment policies, establishment, monitoring, revisions and appointments pursuant to a new contract system for Rule 608 court-appointed attorneys in both civil and criminal cases, including review and appropriate revisions of the standard contract, establishing procedures for applying to contract with the agency, selection process of private attorneys, award of contracts, administration of the program and monitoring performance; consultation with other agencies, courts and the SC Bar where appropriate.

One of the most important goals is the establishment of a sustainable public defender training program with emphasis on training for newly hired public defenders.

We will partner with the Charleston School of Law to co-sponsor a national symposium commemorating the 50th Anniversary of *Gideon v. Wainwright* on September 20, 2013. The one day seminar will feature prominent jurists, scholars and practitioners discussing issues deriving from that opinion. The event will qualify for continuing legal education credit and will be free of charge to South Carolina Public Defenders.

As previously discussed, in May, 2012, the agency again applied for a Byrne Grant through the Department of Justice. The SC Indigent Defense Act of 2007 completely reorganized the state's indigent defense system and requires implementation of a training and professional development program for the providers of indigent defense services. No program has previously existed and due to drastic budget reductions since 2007 SCCID has not had sufficient funds to do so. Consequently, public defenders, particularly those who are new, have little access to proper training; any training, if at all, is done locally and varies widely from locale to locale with no topical consistency, and is mostly just basic "on the job" training.

The goal is to develop, implement and launch a permanent, statewide, sustainable, professional training program for (1) new public defenders entering the workforce (3 years or less), (2) all other public defenders, and (3) appointed or contracted members of the private Bar. For new public defenders, the program is envisioned to be in 12-month cycles with participants meeting in six (6) 3-day sessions of intense essential skills and trial advocacy training, a total of at least 18 days of training per individual following a curriculum to be developed. Attendance and participation will be mandatory with a recurring faculty of experienced trial advocates – private attorneys, law professors, active and retired trial judges, senior public defenders – will be engaged to conduct the sessions. Concurrently, a strict and mandatory mentoring program will be developed for all public defenders in their first year of employment and experienced supervision provided at the local level. For experienced public defenders and members of the private Bar, the training program will develop a schedule of continuing trial advocacy seminars on a recurring basis and identify and engage experienced trial advocates as faculty. One or more experienced trial advocates or retired trial judges and appropriate administrative personnel will

be needed to fully develop the program and structure for implementation and on-going administration. The result will be a fully trained and professionally qualified corps of public defenders in the state.

We will also continue with the Best Practices seminar in partnership with the Charleston School of Law for the eighth year.

If funding is renewed, we will again sponsor and organize a 3-day training program for attorneys certified to handle death penalty trials in SC (2014 will be the 5th year of this seminar, funding through the US Department of Justice).

We will continue with our support, program planning and participation with the SC Public Defender Association and the SC Public Defender Investigator's Association (SCPDIA) for their annual training conferences. The SCPDIA, is the only professional training available to public defender investigators in the state. The agency created this organization in 2006 to satisfy the demand for professional development for public defender investigators.

Plans are being made to sponsor continuing legal education seminars with the Children's Law Center on juvenile issues for both public defenders and appointed attorneys.

The Public Defender Summer Extern Program, also in partnership with the Charleston School of Law, was begun in 2006. Law students are placed in rural public defender operations for the summer at no compensation, but with class credit, to provide much needed Intern assistance to rural public defenders throughout the state.

We will continue our arrangement with the Nelson Mullins law firm to provide, at no cost, four (4) appellate attorneys to assist the agency's appellate division in brief writing and oral arguments before the state's appellate courts to help alleviate the crushing caseload that our appellate division must handle. There are approximately 1400 cases at any one time among ten (10) in-house appellate attorneys. Plans are underway to initiate a Court of Appeals Appellate Lawyer Project, involving selective private attorneys writing appellate briefs and arguing cases in the SC Court of Appeals pro bono.

In addition to upgrades and implementation of technology in system wide case management and data collection, we will continue to pursue our goal of implementation of a system of interface between the public defender case management system and that of Court Administration. This result will be increased efficiencies in both systems. Among the elements of this project is the upgrade of the data collection system to standardize data elements internally and with those of Court Administration; upgrade internal appellate division case management/data collection system and interface with public defender system; install other needed technology upgrades for greater agency and public defender efficiencies, including identification of collateral consequences for every criminal offense, all of which will assist public defender operations and the agency to make better evidenced based decisions in management and performance, and will provide a platform on which to use data for broader qualitative analyses in addition to quantitative analyses.

Weekly financial reports with year-to-date financial data, supporting information and side-by-side comparisons over a 4-year history allow continued adjustments in agency operational priorities as necessary. Close monitoring of fees and fines revenue, which are statutorily designated for specific funding items, shows substantial decline over the last five years in these sources of revenue. This real time information allows the agency to reset priorities and identify opportunities to adjust costs so that realigned priorities can be satisfied. This was necessary in the 10th month of FY 11-12 when available funding for Rule 608 civil and criminal voucher payments was exhausted, and would have been exhausted at least 60 days sooner, but for adjustments that were made when the trending was spotted and the problem was detected in the 2nd quarter.

We continue to seek federal grant funding where possible, and are assisting circuit defenders in seeking additional county and municipal funding. We are working closely with the General Assembly, and respective committees and sub-committees, to address funding needs, using an evidenced-based approach based on data derived from within our public defender technology system and court administration.

4. Key Strategic Challenges:

The main purpose of this agency is to oversee the state's circuit public defender system and the representation of indigents pursuant to SC Appellate Court Rule 608 appointments; to disburse money to the indigent legal system in this State; to represent indigent clients in the appeal process; and to provide direct legal representation to indigent defendants charged with capital offenses. The majority of the funding comes from non-appropriated sources derived from fine surcharges and application fees. This source of funding has not proved sufficient for the criminal defense system and South Carolina currently ranks about 46th in indigent defense spending per capita. Only a portion of the per capita distribution to the Public Defender Offices is appropriated by the General Assembly. For the first time since FY 2000-2001, the agency received recurring appropriated funds for the Conflict Appointment Fund, but continues to rely heavily on court fine surcharges and other fees. The major barrier to the successful operation of the agency is adequate appropriated funding. The non-appropriated sources of revenue have peaked, as other agencies have been funded from these same sources, raising the surcharge on fines to 107.5%. This source has shown significant decreases over the past years and doesn't meet the growing demands of this agency. While sources such as these may provide a good supplemental base for funding, in order for the source to remain adequate, sufficient appropriated funding is a necessity.

Appellate Defense maintains a constant caseload of over 1500 appeals and post conviction relief actions. The division presently employs nine attorneys, each with a caseload far in excess of recommended ethical and professional standards. The historical lack of sufficient operating revenue, funding and budget cuts and considerable increase in caseload leaves this area severely underfunded to accomplish its mission.

5. How This Report is used to Improve Organizational Performance:

This report provides a guide throughout the year for assessing allocation of resources, adjusting priorities and assessing progress toward goals.

Section II – Organizational Profile

1. Main Products Services and Primary Methods of Delivery:

The Office of Indigent Defense disburses money to provide for the state's share of the maintenance of the local Public Defender Offices and reimburses private attorneys for their time and expenses in representing indigent clients when appointed by the courts. The Circuit Public Defenders provide legal representation and services at the trial level to indigent citizens across the state. The Office of Appellate Defense provides representation of indigent clients in direct appeals and post conviction relief actions. The Death Penalty Trial Division provides representation of indigent defendants in capital punishment trials.

2. Key Customer Groups and Their Key Requirements/Expectations:

The key customers of this agency are the citizens of the state who require, but cannot afford legal representation in state courts, the public defenders of this state, and attorneys appointed to represent indigent persons in the State Courts.

3. Key Stakeholders Other Than Customers:

The key stakeholders are the citizens of the State of South Carolina, who are provided legal representation as guaranteed by the State and US Constitution.

4. Key Suppliers and Partners:

The General Assembly is the key supplier for the agency, as it provides the funding for the agency to meet the goals of its mission.

5. Operation Locations:

The agency headquarters is located at 1330 Lady Street, Suite 401, Columbia, SC 29201. This location houses the administrative office of the Commission, The Office of Indigent Defense, The Office of Appellate Defense and the Death Penalty Trial Division offices. Circuit Public Defender Offices are located throughout the state in each judicial circuit and a county public defender office is maintained in each of the forty-six counties.

6. Number of Employees:

37.00 Unclassified FTEs and 30.00 Classified FTEs.

The Commission appoints the Executive Director, who oversees the general operation of the agency. The Executive Director is responsible for the day-to-day operation of the agency.

7. Regulatory Environment:

The agency operates under applicable federal law, state statutes, provisos, rules and regulations, including SC Appellate Court Rules.

8. Performance Improvement System:

The Executive Director and the Commission set performance expectations.

9. Organizational Structure:

The Commission appoints the Executive Director who oversees the general operation of the agency. The executive Director is responsible for the day-to-day operation of the agency. The agency has four divisions, the Office of Indigent Defense, the Division of Appellate Defense, the Death Penalty Trial Division and the Circuit Public Defenders.

10. Expenditures/Appropriations Chart (attached)

11. Major Program Areas Chart (attached)

Section III – Elements of Malcolm Baldrige Award Criteria

Category 1 – Senior Leadership, Governance and Social Responsibility:

The "open-door" policy provides the forum for any employee to communicate with any other employee, including division heads, supervisors, deputy directors and the executive director without any restriction. Email, telephone and personal communication avenues are provided to all staff members. Customers and other stakeholders can contact agency personnel through the website, which provides direct link email or telephone numbers.

The Commission and the Executive Director establish all policies and procedures. Budget and other matters are proposed by the Executive Director to the Commission which accepts, rejects or modifies the proposal.

Recurring and long term agency policy decisions are determined by the Chairman and the Executive Director and then submitted to the full commission for ratification.

The Executive Director is delegated the authority by the commission to make emergency policy decisions and to supervise the day-to-day operations of the agency.

Performance Expectations are determined by the Executive Director.

Organizational Values are established by the Executive Director and the Commission. Ethical Behavioral Standards are those expected to be followed by all state employees.

Staff meetings are used to determine how the agency is functioning. Employees are encouraged to bring up problems and suggest solutions. Informal conversations often result in solving most issues. Suggestions are reviewed and considered based on administrative and fiscal merit.

All staff members work toward achieving maximum effectiveness and cost efficiency in delivering our services.

Staff is encouraged to engage in educational, training and professional development opportunities that may enhance their career growth.

While no formal assessment measures are implemented, close daily interaction between senior staff, supervisors and administrative staff provides effective communication and monitoring of all agency activities.

Staff members are encouraged and allowed time to participate in relevant community activities, including speaking at professional conferences and other forums that include the legal community that we serve.

Frequent meetings are held with all circuit public defenders; a comprehensive manual of performance standards and guidelines has been developed; periodic agency staff meetings on a division or overall basis occur; employees are encouraged to attend professional development seminars and programs.

Through the agency's Summer Rural Extern Program, law students are placed in rural public defender operations throughout the state; Circuit Public Defender ceremonies were organized by the agency and community leaders were invited to attend; magazine and news articles were written and published to give the citizens a better understanding of the role of public defenders and indigent defense.

Category 2 – Strategic Planning

The Strategic Planning process begins with a review of the previous year's budget and workload by the executive staff to determine needs for the upcoming year. The Commissioners are consulted on budget and operational goals. Suggestions and input is also sought from the Circuit Public Defenders from each judicial circuit, the SC Bar Association, the SC Public Defender Association, the SC Association of Criminal Defense Lawyers and the Chief Justice of the SC Supreme Court. The primary mission of this agency is centered on funding for public defenders and appointed counsel and representation of indigents at the trial level and at the appellate level, and most of the planning concerns budget matters. There is also a desperate need for additional attorneys at the trial and appellate level to adequately represent the ever-increasing caseload and bring the caseload numbers into compliance with standards set by the American Bar Association.

Category 3 – Customer Focus:

The main mission of the agency is to aid in providing adequate representation of indigent persons in the State's court systems. This is done by providing funding to supply those persons with an attorney and the resources needed for the legal action. The question of client satisfaction is addressed by the courts. Since the attorneys are the ones requesting the reimbursement and resources, they are best suited to determine the effectiveness of the agency. Determination of indigency is through a screening process at the local intake level.

The open door-open phone policy in the agency allows anyone to voice a concern or discuss an issue with the Executive Director or any other staff member. Conferences and seminars throughout the year provide the opportunity to listen to ideas or suggestions and to develop new approaches to providing services. The agency does not have a policy of "non change". When a concern, criticism or complaint is expressed, the policy or procedure is reviewed and changed if

it will increase efficiency or save time or money. The philosophy of the agency is that everything can be improved upon.

The agency maintains a website that provides a wealth of information for persons seeking services for indigent representation. There are links to all public defender offices throughout the state, as well direct email to key agency staff members for inquiries. The site also provides links to other judicial agencies and state offices.

Seminars, conferences and periodic meetings attended by public defenders, private attorneys and other representatives of the state's judicial system allows agency leadership to interact and exchange information and ideas. Suggestions from appointed attorneys and the legal community are reviewed and implemented if they can provide more efficient and cost-effective methods of delivery of our services.

Communication with the public defender offices, attorneys and other organizations provides input on procedures or policy that may need to be updated. As stated above, when a suggestion is made, the information is reviewed and acted upon to make changes if it provides for more efficient and effective delivery of services.

Part of the customer group is comprised of public defenders and private attorneys appointed to indigent cases. The agency provides information through funding for published seminar materials and appearing at seminars and conferences to explain agency policy and procedures. The Executive Director makes on site visits to the public defender offices, judges, law school administrators and indigent defense programs in neighboring states. The other part is comprised of indigents that are represented by staff attorneys in the Division of Appellate Defense. Success criteria are based on the ability to provide effective representation at a reasonable cost to the citizens of South Carolina.

Guidelines and standards of representation of indigent individuals have been published and made available to criminal defense attorneys throughout the state. They specify the proper way to achieve positive relationships with the clientele. In addition, conferences and the agency's annual Best Practices Seminar also achieve this purpose.

Category 4 – Measurement, Analysis and Knowledge Management:

The primary operation of the agency is providing cost effective representation, either through staff appellate attorneys, public defenders or private attorneys appointed by the courts. Operational performance is measured by maintaining accurate accounting records and compiling accurate statistical information.

Information collected and statistics are analyzed to determine trends and make comparisons. This data provides the basis for funding requests and budget analysis.

The speed and efficiency in processing payments to our customers and the accuracy of the accounting and statistical data collected are measures for the Office of Indigent Defense, while effective representation at a reasonable cost to the state is the measure for the Division of Appellate Defense, the Capital Trial Division and the Circuit Public Defender Division.

Information is collected from payment requests concerning case types, using standardized criminal codes and detailed expense information. From this information, we are able to determine usual and average expenses for various aspects of a case. This information is often

provided to judges and attorneys to assist them in determining what is ‘reasonable and necessary’ for representation in court. The agency has published a "bench book" that provides information on all expert witnesses, including fees charged for any expert that has provided services for indigent defense over the past three years. This has proved to be an invaluable tool in determining the "reasonableness" of an experts proposed charges. Information is also collected from Public Defenders on their county funding, caseloads, staffing, etc. for comparison with funding for solicitors.

Category 5 – Workforce Focus:

When funding permits, employees are encouraged to participate in educational, training and professional development opportunities. Employees are also encouraged to learn and assume additional job duties and responsibilities within the agency. Cross training and sharing of information and work procedures also provide a platform for sharing improvements in the work process.

The agency utilizes several methods to communicate knowledge, skills and share best practices throughout the organization, including the Annual Best Practices Seminar; participatory conferences, continuing legal education for all attorneys employed by the agency, and other training within each division.

Employees have open access to make suggestions for improvement of our processes and are frequently directly involved in designing and improving our systems.

Close daily interaction between senior staff, supervisors and administrative staff provides effective communication and allows supervisors to be continually aware of opportunities for development or utilization of additional skills.

Every employee is reminded that they can discuss any problems with their supervisor, as well as the Executive Director, Chief Appellate Attorney or Assistant Directors. Because of the size of the agency, and the daily contact with each other, employees are encouraged to discuss problems and give advice to each other. Again, because of the friendships that have developed over years of working together, co-workers provide a support system for the staff.

Category 6 – Process Management:

Implementation of technology initiatives, including electronic processing of payment requests, has reduced redundant processes and greatly increased the speed and efficiency in the work processes resulting in improved customer service.

We ensure that all employees are informed of changes and obtaining feedback from the staff when new procedures or processes are implemented.

Organizational knowledge, new technology, cost controls and other efficiency and effectiveness factor are incorporated by informing staff of all agency activities and providing a forum for their ideas and implementation of any changes or improvements that may be needed.

Improvements in technology and automation are continually being upgraded to provide faster and more efficient response to our customer’s needs. Information technology improvements are

the key factor to improving the performance of the agency, as well as the organizations we support and provide services for.

Agency funding is primarily dependent on fluctuating fine, fee and surcharge collections through the court system. The agency receives minimal appropriated funding, making it difficult to project budget and financial stability to meet statutory mandates.

Category 7 – Results

Results are measured by the collection of statistical data on the operation of the indigent defense systems statewide. Payment requests and per capita distribution funding are processed in an efficient and timely fashion. Appellate and capital trial attorneys are closely monitored to assure performance standards are met.

The agency's financial performance is controlled by the amount of money appropriated by the General Assembly.

Agency employees are mature, dedicated, and knowledgeable and work well together to get the work done and achieve agency goals.

The agency is operated in compliance with all applicable statutes, rules and regulations and agency personnel are expected to perform in compliance with all applicable statutes, rules and regulations, including professional codes of ethics for professionally licensed employees.

The Executive Director has direct contact with the agency's customers. He is available to any person who calls and often gets calls from attorneys, judges, public defenders and other agency personnel. The agency has an open door, open phone policy.

The Chief Appellate Defender is responsible for the division's overall caseload and communicates with clients, their families, the Courts, other lawyers and all other interested parties.

The Chief Attorney for the Death Penalty Trial Division is responsible for the division's caseload, support staff and activities.

The Circuit Public Defenders are selected for a four year term by a panel comprised of elected representatives from each county bar association within the circuit. They are responsible for delivery of indigent defense services in criminal proceedings at the local level.

Civil Appointment Cases are handled by private attorneys appointed under South Carolina Appellate Court Rule 608.

Daily interaction and communication with the courts, public defenders, and appointed counsel representing indigents, provides information and feedback for assessing the impact and risks for the organization.

The Executive Director is responsible for final accountability. Staff is trained to examine all requests for payment to ensure that all required documentation is provided and that all statutes, policies and procedure are complied with.

The speed and accuracy of processing payment requests and the resolution of problems are reviewed and acted upon in a timely fashion by staff members and the executive staff. In the Appellate Division, the Chief Appellate Defender monitors the written and in-court performance of his staff to ensure that they exceed professional and ethical standards. The Chief Attorney for the Death Penalty Trial Division monitors the performance of his staff to ensure that they exceed professional and ethical standards. The Circuit Public Defenders are subject to statutory guidelines and performance standards developed by the commission

Throughout the budget deliberation process the agency staff and the circuit defenders worked tirelessly with the legislative leadership, our legislative Commissioners, and local legislators and remained focused on the agency's message. The Circuit Defenders responded to our calls to attend all budget subcommittee meetings and floor debates. We were fortunate to have legislative Commissioners who made sure that our message resonated in both houses and additional Commissioners who conveyed our message with their personal contacts. We commend all agency personnel for their diligence and ability to make our case for full funding, clearly and forcefully, relying entirely on data which our system generated.

One top budget priority for FY12-13 was adequate funding for SC Appellate Court Rule 608 Appointments. These cases include Abuse and Neglect of minors and vulnerable adults, Termination of Parental Rights, Probate Commitments, Sexually Violent Predator Act and Post Conviction Relief actions. Throughout the lengthy budget deliberations, we constantly pushed for this funding, and stayed in active communication with the SC Bar leadership and its government affairs staff on this issue, as well as with the entire Bar membership through articles in the Bar's *EBlast* (email notifications to all SC Bar members) and *Lawyers Weekly*.

A great deal of agency senior staff time during the year was devoted to managing and protecting the agency budget. A detailed balance sheet is generated each Monday morning to assist with ongoing financial decision-making.

The Office of Indigent Defense provided \$17,000,000 for the representation of indigent persons in the criminal justice system, of this amount the Agency:

Distributed \$9.5M to the state's Public Defender offices for operating expenses, an increase of \$1M from previous year.

Processed payments of \$2.1M for fees and expenses in capital cases, a decrease of \$30K from FY12.

Paid \$3.2M to appointed counsel for fees and expenses in non capital conflict cases, an increase of \$750K over FY12.

Paid \$2.75M for Civil/Family Court representation of indigents. This amount included voucher held over from the previous fiscal year due to lack of funding.

Paid \$379,817 for transcripts in indigent appeals cases.

Disbursed \$1,515,522 to local Legal Aid Services. This amount has declined due to continued decrease in fine and fee collections.

Division of Appellate Defense provides quality representation for clients in direct appeals and post-conviction relief appeals statewide. The division began the fiscal year with one thousand six hundred and twenty-two (1622) cases and opened six hundred and ninety-eight (698) cases during Fiscal Year 2013. The division closed eight hundred and fifty-nine (809) cases during the same period. The Appellate Division is currently handling one thousand five hundred and seven (1507) cases, including eleven (11) death penalty cases with a staff of ten attorneys.

During the past fiscal year Chief Appellate Defender Robert Dudek presented at the Public Defender Conference on the South Carolina Case Law Update in September, 2012. Mr. Dudek also did a presentation for the Commission on Indigent Defense's annual Best Practices Seminar on the topic of Preserving the Trial Record for Appeal in March, 2013. Mr. Dudek continues to oversee the pro-bono program with five attorneys from the Nelson Mullins law firm wherein those lawyers handled or participated in oral arguments with Mr. Dudek in six to eight cases last year for the Appellate Division.

Appellate Defender Kathrine Hudgins is serving her second year as the Editor of the South Carolina Lawyer Magazine. Ms. Hudgins co-teaches criminal trial advocacy at the USC School of Law. Ms. Hudgins also spoke at Harvard Law School at a conference titled Toward a Civil Gideon – the Future of Legal Services. In addition, Ms. Hudgins served as a judge for the South Carolina Bar High School Mock Trial Competition.

Appellate Defender Susan Hackett serves on two South Carolina Bar Association Committees: Law Related Education (LRE) and the Professional Responsibility Committee. She was co-chair for the Literary Vine and serves as Vice-President of the Board of the Friends of Richland County Library this year.

David Alexander, a former law clerk to the Honorable Henry Herlong, has joined the Appellate Division.

Carmen Ganjehsani has joined the Division as an Appellate Defender. Ms. Ganjehsani is a graduate of Wake Forest University and the University Of South Carolina School Of Law. She previously was employed as an associate attorney with the Nelson Mullins law firm in Atlanta, Georgia, as an associate attorney with Richardson Plowden and as a partner in Carpenter Appeals and Trial Support, LLC. Ms. Ganjehsani serves on the Practice and Procedure Committee of the South Carolina Bar.

Benjamin Trip has also joined the Division as an Appellate Defender. Mr. Tripp is a graduate of Duke University and the University Of South Carolina School Of Law. He was an attorney with the SC Department of Revenue prior to accepting this position.

Capital Trial Division: The Capital Trial Division of the South Carolina Commission on Indigent Defense is an office wherein three (3) attorneys are charged with meeting the high standards of capital defense demanded by the federal and state constitutions.

When the Capital Trial Division became fully staffed in early 2009, there were generally between thirty-five (35) and forty (40) death penalty trials pending in South Carolina. Presently, there are approximately eighteen (18) capital cases pending. The Capital Trial Division represents, or is about to represent (13) of these (18) defendants. The Capital Trial Division has represented approximately twenty-eight (28) capital eligible defendants since early 2009.

The primary mission of the Capital Trial Division is to undertake direct representation of indigent defendants facing a death penalty prosecution in South Carolina at the trial level. The Division also provides consulting services for lawyers engaged in representing a defendant at a capital trial in South Carolina. The Division is also committed to providing capital defense training to lawyers in South Carolina.

The Division has enrolled as counsel in approximately thirty-three (33) death penalty matters since being fully staffed. It has concluded its representation in nineteen (19) of those matters. Only one defendant represented by the Division has received a death sentence. As a result, only one death penalty trial conducted by the attorneys of the Capital Trial Division has been appealed. That case was reversed based upon legal issues presented at the trial level by attorneys from the Capital Trial Division. Currently, there are no death sentences in effect for any of the defendants represented by the Capital Trial Division at the trial level.

There are approximately nineteen (19) death penalty cases in South Carolina that are pending and are appropriately considered to be capital cases. The three attorneys in the Capital Division are currently involved in the direct representation of thirteen (13) defendants facing death penalty prosecutions.

In the twelve (12) years before the creation of the Capital Trial Division, only two (2) capital defense seminars were held in South Carolina that were presented and sponsored by a South Carolina entity. These were both small one-day seminars sponsored by two (2) nonprofit organizations, the South Carolina Association of Criminal Defense Lawyers (SCADL) and the South Carolina Death Penalty Resource and Defense Center (formally the Center for Capital Litigation).

The Capital Division has, despite being in existence for a relatively short amount of time, arranged for seven (7) capital defense CLE programs in South Carolina.

The Capital Trial Division has also begun to partner with law schools that provide a “public” service law corps. This is generally between six (6) months to a year. The Capital Trial Division recruited its first law corps attorney this past year from the University of Miami School of Law.

The Capital Trial Division also recruits law clerks from the University of South Carolina School of Law and the Charleston School of Law for year-round and summer positions. The Division also participates in a public interest law clerk job fair to secure additional law clerks for the summer months. All law clerk positions with the Division are non-paying. The Division receives approximately Twenty-five Thousand (\$25,000.00) Dollars of law clerk services on a volunteer basis.

Conclusion: The state is fortunate to have an extremely professional and dedicated corps of public defenders, at the trial level, at the appellate level and to represent capital cases, who are committed to carrying the heavy load for now. They should be recognized and commended for protecting and upholding every American's Sixth Amendment rights; but for the future the systemic problems must be addressed, the system must be adequately funded, the number of public defenders increased and the individual caseload substantially reduced for the system to be sustained and succeed as envisioned by the 2007 Indigent Defense Act.

Accountability Report Appropriations/Expenditures Chart

Base Budget Expenditures and Appropriations

Major Budget Categories	FY 11-12 Actual Expenditures		FY 12-13 Actual Expenditures		FY 13-14 Appropriations Act	
	Total Funds	General Funds	Total Funds	General Funds	Total Funds	General Funds
Personal Service	\$ 4,057,654	\$ 3,521,881	\$ 4,232,265	\$ 3,717,803	\$ 4,285,155	\$ 3,630,701
Other Operating	\$ 568,764	\$ 89,500	\$ 860,467	\$ 92,500	\$ 813,800	\$ 96,000
Special Items	\$ 15,892,164	\$ 3,134,512	\$ 20,273,697	\$ 12,136,381	\$ 26,402,146	\$ 14,193,328
Permanent Improvements						
Case Services						
Distributions to Subdivisions						
Fringe Benefits	\$ 1,828,512	\$ 1,742,055	\$ 1,904,977	\$ 1,806,093	\$ 1,945,578	\$ 1,856,778
Non-recurring	\$ 1,592,413	\$ 1,500,000	\$ 101,000	\$ 101,000		
Total	\$ 23,939,507	\$ 9,987,948	\$ 27,372,406	\$ 17,853,776	\$ 33,446,679	\$ 19,776,807

Other Expenditures

Sources of Funds	FY 11-12 Actual Expenditures	FY 12-13 Actual Expenditures
Supplemental Bills		
Capital Reserve Funds	\$ 16,495	\$ 189,705
Bonds		
	\$ 46,128.64	\$ 57,480.61

CCLI GRANT

Major Program Areas

Program Number and Title	Major Program Area Purpose (Brief)	FY 11-12 Budget Expenditures	FY 12-13 Budget Expenditures	Key Cross References for Financial Results*
1	Funding for agency operations and programs funding to meet statutory mandates and fulfill agency mission	State: 10,007,948.37 Federal: 46,128.64 Other: 13,948,053.01 Total: 24,002,130.02 % of Total Budget:	State: 17,853,776.34 Federal: 57,480.61 Other: 9,708,335.13 Total: 27,619,592.08 % of Total Budget:	7
		State: Federal: Other: Total: % of Total Budget:	State: Federal: Other: Total: % of Total Budget:	
		State: Federal: Other: Total: % of Total Budget:	State: Federal: Other: Total: % of Total Budget:	
		State: Federal: Other: Total: % of Total Budget:	State: Federal: Other: Total: % of Total Budget:	
		State: Federal: Other: Total: % of Total Budget:	State: Federal: Other: Total: % of Total Budget:	

Below: List any programs not included above and show the remainder of expenditures by source of funds.

Remainder of Expenditures:	State: Federal: Other: Total: % of Total Budget:	State: Federal: Other: Total: % of Total Budget:
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* Key Cross-References are a link to the Category 7 - Business Results. These References provide a Chart number that is included in the 7th section of this document.

Strategic Planning

Program Number and Title	Supported Agency Strategic Planning Goal/Objective	<u>Related FY 11-12 and beyond</u> Key Agency Action Plan/ Plan/Initiative(s) and Timeline for Accomplishing the Plan (s)	Key Cross References for Performance Measures*
1. Administration	Continued delivery of quality cost effective indigent defense services to the citizens of SC	Obtain adequate funding for agency operations and programs to meet federal and state constitutional and statutory mandates	7